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 RICHARD W. WIEKING
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 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND**

Attorneys for Plaintiff
 Service Employees International Union, Local 790

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SERVICE EMPLOYEES INTERNATIONAL
 UNION, LOCAL 790

No. **C07-02766**

JL

Plaintiff,

v.

JOSEPH P. NORELLI, Individually, and in his
 capacity as Regional Director, NATIONAL
 LABOR RELATIONS BOARD, REGION 20;
 ROBERT J. BATTISTA, Individually and in
 his Capacity as Chairman and Member of the
 NATIONAL LABOR RELATIONS BOARD;
 PETER N. KIRSANOW, Individually, and in
 his Capacity as a Member, NATIONAL
 LABOR RELATIONS BOARD; DENNIS P.
 WALSH, Individually, and in his Capacity as a
 Member, NATIONAL LABOR RELATIONS
 BOARD; WILMA B. LIEBMAN, Individually,
 and in her Capacity as a Member of the
 NATIONAL LABOR RELATIONS BOARD;
 PETER CARY SHAUMBER, Individually, and
 in his Capacity as a Member, NATIONAL
 LABOR RELATIONS BOARD,

**REQUEST FOR ORDER TO SHOW
 CAUSE WHY PRELIMINARY
 INJUNCTION SHOULD NOT ISSUE**

Date:

Time:

Judge:

Defendants.

Plaintiff Service Employees International Union Local 790 ("Local 790") respectfully
 requests that this Court issue an Order to Show Cause, a proposed version of which is filed
 concurrently herewith, why a Preliminary Injunction under Fed. R. Civ. P. 65 should not issue

1 restraining and enjoining the above-named Defendants, their officers, agents, servants, employees
 2 and attorneys, and all those in active concert or participation with them from: conducting a de-
 3 authorization election pursuant to the Decision and Order of the NLRB, dated March 20, 2007, in
 4 NLRB Case No. 20-UD-445, reported as *Covenant Aviation Security, LCC and Stephen J. Burke,*
 5 *Petitioner and SEIU Local 790*, 349 NLRB No. 67 (hereinafter "NLRB Decision and Order").

6 The grounds for Plaintiff's motion are that the Defendants, by issuing and taking steps to
 7 implement the NLRB Decision and Order, violated a clear statutory prohibition, set forth at
 8 National Labor Relations Act § 9(e)(1), 29 U.S.C. § 159(e)(1), which precludes an election based
 9 on a petition to de-authorize a Union security clause, except where such petition is supported by
 10 signatures of 30 percent or more of the members of a collective bargaining unit who are, at the
 11 time the signatures are gathered and at the time the petition is filed, covered by a collective
 12 bargaining agreement containing a Union security clause.

13 Here, it is undisputed that the petition at issue was filed on January 11, 2006, before any
 14 collective bargaining agreement between the Union and Covenant Aviation, LLC ("Covenant"),
 15 went into effect upon its execution by Covenant on January 13, 2006. The petition was, therefore,
 16 filed prematurely. It is also undisputed that nearly 70% of the signatures submitted in support of
 17 the de-authorization petition were dated in October 2005 and were thus collected over a month
 18 before contract negotiations had begun and two or more months prior to disclosure of the terms of
 19 the proposed contract to affected employees for a ratification vote. It is further undisputed that
 20 approximately 92% of the signatures submitted in support of the de-authorization petition predated
 21 the ratification vote, and every signature offered in support of the petition predated the execution of
 22 the contract on January 13, 2006.

23 The plain text of NLRA § 9(e), cases construing its text, and the legislative history of the
 24 provision make clear that § 9(e) prohibits prospective or preemptory use of the de-authorization
 25 petition process as was improperly approved by the Defendants in this case.

26 An original suit in equity under the general jurisdiction of the above-entitled Court under
 27 28 U.S.C. § 1337(a), is proper where, as here, the Decision and Order of the NLRB violated a clear
 28 statutory prohibition and was, therefore, in excess of the Board's jurisdiction, to the harm of the

1 Plaintiff, and there is no adequate means by which to obtain judicial review of the Board's action.
 2 (See *National Association of Agriculture Employees v. Federal Labor Relations Authority*, 473
 3 F.3d 983, 988, fn 5 (9th Cir. 2007); *Bays v. Miller*, 524 F.2d 631 (9th Cir. 1975); *Leedom v. Kyne*,
 4 358 U.S. 184 (1958).)

5 Plaintiff will suffer irreparable harm if the Court does not enjoin further action by
 6 Defendants because Plaintiff has no other remedy at law and, if an election based on the de-
 7 authorization petition is allowed to take place, contrary to law, will face violation of its rights
 8 under the NLRA, substantial costs and extreme administrative and organizational burdens
 9 associated with campaigning against the unlawful de-authorization proposal, disruption of its
 10 members' workplace resulting from the competing campaigns and controversy surrounding the
 11 conducting of an unlawful election, and will unjustifiably and unlawfully face potential jeopardy to
 12 its ability to fulfill its functions as hundreds of employees' chosen collective bargaining
 13 representative.

14 In or about May 2007, NLRB Region 20 Regional Director Joseph P. Norelli issued a
 15 written notice, announcing that a secret-ballot de-authorization election would commence on June
 16 4, 2007, with the mailing of ballots to members of the bargaining unit represented by Local 790.
 17 (See Declaration of David Rosenfeld In Support of Request for Order to Show Cause Why
 18 Preliminary Injunction Should Not Issue, filed concurrently herewith ("Rosenfeld Dec.") at ¶ 4.)

19 The election was subsequently suspended briefly due to the fact that Covenant
 20 representatives were unable to produce an "Excelsior" list of bargaining unit members to the
 21 NLRB because TSA opposed production of that list by Covenant on national security grounds. (Id.
 22 at ¶ 5.)

23 On or about May 24, 2007, counsel for Plaintiff spoke with Dawn Goldstein, an attorney
 24 with the special litigation unit of the office of the NLRB General Counsel. Ms. Goldstein informed
 25 Plaintiff's counsel that the NLRB does not, at present, know exactly when the de-authorization
 26 election can be expected to proceed due to the Excelsior list issue but that they expect the Excelsior
 27 list issue to be resolved quickly and the election to proceed forthwith. (Id. at ¶ 6.)

28 Ms. Goldstein further informed Plaintiff's counsel that the NLRB would agree to a hearing

1 on an Order To Show Cause Why Preliminary Injunction Should Not Issue either the week of May
2 29, 2007, or as soon thereafter as the Court can hear the matter, providing adequate time for service
3 of Plaintiff's moving papers and for service and filing of Defendants response and Plaintiff's reply.

4 Plaintiff's Motion for Preliminary Injunction is based on its Notice and Motion filed
5 concurrently herewith, the Verified Complaint for Declaratory and Injunctive Relief and exhibits
6 attached thereto filed concurrently herewith, the supporting Memorandum of Points and
7 Authorities filed concurrently herewith, the Declaration of Jamie Thompson filed concurrently
8 herewith, and the Declaration of David Rosenfeld filed concurrently herewith and such other oral
9 or written materials as the Court deems just and proper.

10
11 Dated: May 25, 2007

12 WEINBERG, ROGER & ROSENFELD
13 A Professional Corporation
14 Vincent A. Harrington, Jr.
15 David A. Rosenfeld
16 Eric M. Borgerson

17 By: 

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20 Service Employees International Union, Local 790

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